

In the Matter of Merchant Mariner's Document No. Z-98497 and all other Seaman Documents

Issued to: CARL VERNON WOOD

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1097

CARL VERNON WOOD

This appeal has been taken from an order, dated 5 August 1958, by an Examiner of the United States Coast Guard at New Orleans, Louisiana, revoking Appellant's seaman documents. The Examiner's ultimate finding was that Appellant was guilty of having been convicted, on 12 March 1958, by the United States District Court for the Eastern District of Louisiana, a court of record, for violation of a narcotic drug law of the United States, to wit: 18 U.S.C. 1407 (departure from the United States without registering a prior narcotics conviction).

Although this conviction was proved by a certified copy of a judgment and commitment, there were two material errors in the record which, in my opinion, require that the case be remanded for a hearing de novo.

The record indicates that Appellant was originally charged, on 30 July 1958, Under Revised Statute 4450, as amended (46 U.S.C.239), for failing to register his prior narcotics conviction upon departing from this country on the SS YAQUE. The hearing was also commenced on 30 July and adjourned on the same date to give Appellant an opportunity to obtain counsel.

On 1 August, the proceeding was reconvened at the request of Appellant who was still without counsel. The Examiner stated that this was a hearing under the provisions of R.S. 450, as amended (R.1), and then he told the Investigating Officer to charge Appellant under a different statute, Public Law 500 (46 U.S.C. 239a, 239b), with a conviction of a narcotic law violation (R.3). Another charge and specification form was filled out, alleging the conviction mentioned above as the Examiner's ultimate finding, but the printed portion of the form stating that the action was under R.S. 4450, as amended, was not changed to 46 U.S.C. 239a-b as it should have been. The new form, dated 1 August, was served on Appellant without interruption of the hearing (R.3) and he entered a plea of guilty to this (R.4). The original charge and specification is not contained in the record on appeal.

The first material error was the Examiner's action of requiring the Investigating Officer to change the specification from one appropriate under R.S. 4450, as amended (46 U.S.C.239) to a specification alleging the conviction, as appropriate under Public Law 500 (46 U.S.C. 239a,239b). The latter statute was enacted by Congress as an entirely separate and distinct law from 46 U.S.C.

239 rather than as an amendment to it. The original specification, alleging the failure to register, was perfectly valid under 46 U.S.C. 239 because Appellant was serving under authority of his document on the SS YAQUE at the time of the offense. Hence, the Examiner had no authority to usurp the prosecuting function of the Investigating Officer and to prevent him from utilizing this optional method of charging Appellant. This was highly prejudicial to Appellant because the regulation applicable to proceedings under 46 U.S.C. 239 does not make revocation of documents mandatory for a failure to register a prior narcotics conviction. Title 46 CFR 137.03-1 refers only to "possession, use, sale, or association with narcotic drugs." On the other hand, proof of the fact of conviction, for violation of this narcotic drug law requiring registration of prior narcotic convictions (18 U.S.C. 1407), requires revocation in actions under 46 U.S.C. 239a-b.

It was also improper to omit the original charge and specification form from the record on appeal since it became part of the record when the hearing commenced and it was never properly withdrawn with Appellant's consent.

The second material error was the failure to change the printed portion of the charge and specification form to state that the hearing was to be conducted under 46 U.S.C. 239a-b rather than 46 U.S.C. 239. The Examiner further erred in this respect when he failed to correct his opening statement that this was a hearing under 46 U.S.C. 239. It was improper to proceed under the originally stated authority for the proceeding after the specification had been changed to allege the fact of conviction which is only appropriate under a different statute. Also, Appellant was never served with written notice of a hearing to be conducted under 46 U.S.C. 239a-b.

It is considered that these errors were highly prejudicial particularly since the hearing was not adjourned on 1 August, when the new charge and specification form was served on Appellant, despite Appellant's previously repeated statement that he was unable to understand the implications of this action against his document as a result of his conviction for a violation of 18 U.S.C. 1407.

In view of the foregoing errors which affected the substantial rights of Appellant, it is my opinion that the fairest disposition is to remand the case with directions for another Examiner to proceed under R.S. 4450, as amended (46 U.S.C. 239), with a specification alleging Appellant's departure from the United States on the SS YAQUE without having registered his prior narcotics conviction. This is in accord with the specification as originally drawn.

The finding that Appellant was guilty of the conviction referred to herein is set aside.

#### ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 5 August 1958, is VACATED. The record is REMANDED for proceedings not inconsistent with this decision.

J.A. HIRSHFIELD  
Rear Admiral, United States Coast Guard

Acting Commandant

Dated at Washington, D. C., this 15th day of May, 1959.